

MOTION FILED
NOV 28 1990

NO. 90-761

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

CHOPIN ASSOCIATES, acting by THEODORE B. GOULD and
MIAMI CENTER CORPORATION, its Partners, and
MIAMI CENTER LIMITED PARTNERSHIP, acting by
THEODORE B. GOULD and MIAMI CENTER CORPORATION,
its GENERAL PARTNERS,

Petitioners,

v.

FRED STANTON SMITH, Trustee, THE BANK OF NEW YORK,
CITY NATIONAL BANK OF FLORIDA, as Trustee of
Land Trust #5008793, DADE COUNTY, FLORIDA, a
Municipality, JOEL ROBBINS, as Property
Appraiser of Dade County, Florida, FRED GANZ,
as Tax Collector of Dade County, Florida,
RANDALL MILLER, as Executive Director of the
Florida Department of Revenue, S. HARVEY ZIEGLER,
as Escrow Agent for the Miami Center Liquidating
Trust, and HERBERT STETTIN, as Escrow Agent for
the Miami Center Liquidating Trust,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

MOTION FOR DEFERRAL OF
CONSIDERATION OF PETITION

Petitioners Miami Center Limited Partnership and Chopin Associates¹ hereby respectfully move for deferral of consideration of the petition for writ of certiorari pending resolution of a related aspect of the case that could make consideration of the petition unnecessary.

This case arises out of Chapter 11 bankruptcy proceedings involving the Miami Center Limited Partnership (as well as certain related entities and persons), which developed the Miami Center, a hotel, office and retail complex in Miami, Florida. On August 8, 1985, the bankruptcy court confirmed a Plan of Reorganization (the "Plan") proposed by The Bank of New York ("BNY"), the major secured creditor of the debtors. The central feature of the Plan was the sale by a court-appointed trustee (the "trustee") of the Miami Center to BNY's designee. The issue raised by the petition for certiorari is whether the bankruptcy court's approval of a settlement for the payment of approximately \$10 million of real estate taxes was proper under the bankruptcy law.

A related aspect of the case now pending in the Eleventh Circuit, however, could require the bankruptcy court to reassess the Plan, rendering a decision by this Court on this issue possibly irrelevant to the ultimate resolution of the case. The related aspect of the case raises the question whether the trustee is required to file income tax returns on behalf of the

¹ Related entities are listed in the Petition for Certiorari at pp. ii through xvi.

debtors and pay income taxes pursuant to I.R.C. § 6012(b)(3) or (4) and I.R.C. § 6151(a), or otherwise.²

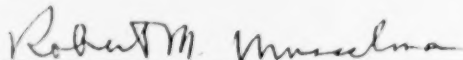
The trustee brought a declaratory judgment action seeking resolution of the question whether he was required to file returns and pay taxes. In a split decision, a panel of the Eleventh Circuit decided that the trustee is not required to file federal income tax returns or pay federal income taxes. On November 6, 1990, the debtors filed a petition for rehearing and suggestion of rehearing in banc. Should the Eleventh Circuit grant rehearing or rehearing in banc and reverse, the bankruptcy court would be required to reevaluate the Plan of Reorganization because of the potential significant tax liabilities the trustee will have incurred -- liabilities that were not provided for in the Plan. Should that decision of the Court of Appeals stand, review on certiorari and reversal by this Court of that decision would lead to the same result. If the bankruptcy estates incur a substantial federal income tax liability which was not provided for in the plan, then their ability to pay the real estate taxes in the current petition would be jeopardized.

Finally, deferral of consideration of the current petition for a writ of certiorari will not prejudice the Respondents. The Respondents are not awaiting the execution of judgment; nor is there any coercive relief against the respondents.

² 28 U.S.C. § 960 (1988) and 31 U.S.C. § 3713 (1988) also require court-appointed trustees and other receivers of insolvent business entities to pay taxes and other debts to the United States.

We therefore respectfully request that the Court defer consideration of this petition for a writ of certiorari until resolution of the tax question now pending before the Eleventh Circuit.

Respectfully submitted,



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November 28, 1990

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by regular United States Mail first-class postage prepaid on November 28, 1990, to the following:

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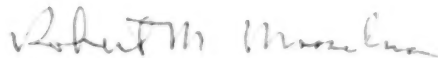
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